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DOE review completed.

AUG 18 1982

DP-343

MJNowd

Mr. Hal Boozer  
 Director of Civil Rights Advocacy  
 National Gay Task Force  
 1304 4th Street, SW  
 Washington, DC 20024

DP-34.1

Tisaacs

Dear Mr. Boozer:

Thank you for your letter of August 2, 1982, requesting clarification of the recent modification of the Department of Energy (DOE) clearance criteria, 10 CFR Part 710 ("Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material"). As you may be aware, the provisions of 10 CFR Part 710 not only cite criteria which may be a basis for denial or revocation of an individual's DOE access authorization, but also cite specific procedures which must be offered to an individual affording him/her administrative "due process" before a final determination may be made by the Assistant Secretary for Defense Programs.

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In answer to your specific questions, the following information is offered regarding the DOE's clearance policy concerning an individual's homosexual behavior.

**Question:** Is homosexuality or homosexual behavior an automatic disqualifier with respect to security clearances?

**Answer:** No. The DOE clearance criteria was revised (among other reasons) in recognition of the fact that the DOE has granted access authorizations to admitted homosexuals. Consequently, specific reference to homosexuality as an automatic disqualifier was removed from the revised clearance criteria.

**Question:** Under what circumstances, if any, may homosexuality or homosexual behavior become a factor in disqualifying a candidate for a security clearance?

**Answer:** Homosexuality or homosexual behavior may disqualify an individual for a security clearance when it is established during a formal hearing that such behavior furnishes reason to believe that the individual may be subject to coercion, pressure, or influence (due to involvement in such activity) which may cause him to act contrary to the best interests of national security. An example of such an interpretation would be where it is established that an individual has attempted to conceal involvement in such activity from family, friends, co-workers, or employer.

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 bcc: E. E. Wagner, DP-343.1, GTN

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**Question: What categories of security clearance are affected?**

**Answer: The DOE clearance criteria applies to all access authorization levels granted by the Department.**

**I trust this information sufficiently responds to your questions. We would be glad to provide you any additional information upon request.**

**Sincerely,**

**Original signed by  
Thomas Isaacs**

**Ralph E. Caudle  
Director  
Office of Safeguards and Security  
Defense Programs**

Part established only the procedures for the priority supply of DOD coal requirements and did not implement the other section 101 authorities, including the authority to meet the coal supply requirements of non-DOD defense agencies and defense contractors. A situation requiring DOE's exercise of the other authorities would thus require recourse to ad hoc operations for coal allocation to parties other than DOD. Moreover, the DOD priority delivery procedures in Part 317 did not administratively enhance DOE's ability to act directly under the statute and Executive Order, without resort to the regulations. For these reasons, DOE, by notice of January 11, 1982, proposed the removal of Part 317 and provided a thirty-day public comment period during which interested parties were invited to submit written comments on issues raised by the proposed action. (47 FR 1137). No comments were received. Accordingly, on the basis of the information contained in the record and having not been apprised of information that would persuade it to the contrary, DOE removes 10 CFR Part 317, effective August 16, 1982.

#### Procedural Matters

**A. NEPA Compliance.** DOE has determined that the removal of Part 317 does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of § 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). Since DOE can act to promote the national defense, exercising its same authority under section 101 of the DPA regardless of the presence or absence of Part 317, the removal of Part 317 will have no impact upon DOE's exercise of the DPA authority, when such action is required. Therefore, an Environmental Impact Statement assessing the impact of alternatives to this proposal is not required.

**B. Executive Order No. 12291.** Section 3(b) of Executive Order No. 12291 directs each agency to initially determine whether an action it proposes constitutes a major rule.

DOE determined that the removal of Part 317 does not constitute a major rule as it does not result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs for prices for consumers; individual industries; Federal, state, or local government agencies; or geographic regions; or (3) significant adverse effects on competition, employment,

investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets (47 FR 1137, January 11, 1982).

In reaching this determination, DOE also considered that the procedures in Part 317 were not necessary to its authority or ability to take emergency coal allocation actions under § 101 of the DPA and Executive Order 11790, and that, accordingly, the removal of the Part would have no effect, either positive or negative, on any sector of the economy.

**C. Regulatory Flexibility Act.** The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that an agency shall prepare a regulatory flexibility analysis with regard to a rule that will have a significant economic impact on a substantial number of small entities.

For the reasons discussed in paragraph B, above, DOE certified that the rule removing Part 317 would not have a significant economic impact on a substantial number of small entities (47 FR at 1138, January 11, 1982).

**D. Paperwork Reduction Act.** No data collection or reports are required as a result of this rulemaking; therefore, clearance of DOE's action by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* is not required.

(Defense Production Act of 1950, 50 U.S.C. App. 2071 *et seq.*; Department of Energy Organization Act, Pub. L. 95-61, 42 U.S.C. 7101 *et seq.*; E.O. 11790, 29 FR 23185 (June 27, 1974); E.O. 12038, 43 FR 4957 (February 7, 1978))

Issued in Washington, D.C., June 30, 1982.

William A. Vaughan,

Assistant Secretary, Environmental Protection, Safety and Emergency Preparedness.

#### List of Subjects in 10 CFR Part 317

Administrative practice and procedure; coal allocation; Government contracts; Penalties; Reporting requirements; Strategic and critical material.

For the reasons set out in the preamble, Chapter II, Title 10 of the Code of Federal Regulations is amended by removing Part 317.

#### PART 317—PRIORITY DELIVERY OF COAL UNDER DEPARTMENT OF DEFENSE CONTRACTS [REMOVED]

(FR Doc. 82-19180 Filed 7-14-82; 8:45 am)  
BILLING CODE 6450-01-M

#### 10 CFR Part 710

#### Defense Programs; Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material

AGENCY: Energy Department.

ACTION: Final rule.

**SUMMARY:** The Department of Energy (DOE) is amending 10 CFR Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material". DOE is amending Part 710 to simplify the criteria and to consolidate the two categories of the existing criteria into a single set of criteria.

The previous criteria set forth specific types of derogatory information that create a question as to an individual's eligibility for DOE access authorization. These criteria were divided into two categories. Category "A" derogatory information was such that if there were sufficient grounds to establish a reasonable belief as to the truth of one or more of the items in this category, these grounds shall be the basis for a recommendation by the DOE hearing officer for denying or revoking an individual's access authorization. Category "B" derogatory information was such that if there were sufficient grounds to establish a reasonable belief as to the truth of one or more of the items, the extent of activities falling within the category, the period in which such activities occurred, the length of time which has since elapsed, and the individual's attitudes and convictions shall be considered in determining whether the recommendation for denying or revoking an individual's access authorization will be adverse or favorable. Under the final rule, DOE is establishing a single set of criteria by which the DOE hearing officer will base his/her recommendation for an adverse or favorable determination of an individual's eligibility for DOE access authorization. The DOE hearing officer, under the final rule, will consider all the factors previously considered under Category "B".

**EFFECTIVE DATE:** August 16, 1982.

**FOR FURTHER INFORMATION CONTACT:** Martin J. Dowd, Director, Division of Security, Office of Safeguards and Security, U.S. Department of Energy, Washington, DC 20545 (301/353-4842).

**SUPPLEMENTARY INFORMATION****A. Background**

The DOE published its proposed rule in the Federal Register on January 20, 1982, 47 FR 2874. Public comments were invited on or before February 19, 1982. No public comments have been received.

**B. Procedural Requirements**

**1. Section 501 of the DOE Organization Act.** Under section 501(c) of the Department of Energy Organization Act, the DOE is not bound by the prior hearing requirements of subsections (b), (c) and (d) with respect to a regulation upon our determination that no substantial issue of fact or law exists and that the regulation is unlikely to have substantial impact on the Nation's economy or large numbers of individuals and businesses. Where it is determined that no substantial issue or impact exists, the regulation may be promulgated in accordance with section 553 of Title 5 U.S.C. The revision of the criteria at 10 CFR Part 710 raises no substantial issues of fact or law, and does not have a substantial impact on the Nation's economy or large numbers of individuals or businesses.

**2. Executive Order No. 12291.** It had been determined that this amendment is not a major rule subject to the requirements of the Executive Order No. 12291 (46 FR 13193, February 19, 1981) because it is not likely to result in an annual effect on the economy of more than \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**3. Regulatory Flexibility Act.** Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601-612, DOE finds that sections 603 and 604 of the Act do not apply to this amendment because promulgation of the rule will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 10 CFR Part 710**

Administrative practice and procedure, Classified information, Government contracts, Government employees, Nuclear materials.

Issued in Washington, DC on June 28, 1982.  
Herman E. Roser,  
Assistant Secretary for Defense Programs.

In consideration of the foregoing, Part 710 of Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below.

**PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SIGNIFICANT QUANTITIES OF SPECIAL NUCLEAR MATERIAL**

1. Section 710.10 is amended by revising paragraph (d) to read as follows:

**§ 710.10 Application of the criteria.**

(d) In resolving a question concerning the eligibility or continued eligibility of an individual for access authorization, the DOE Hearing Officer shall consider the extent of activities, the period in which such activities occurred, the length of time which has since elapsed, and the attitudes and convictions of the individual in determining whether the recommendation will be adverse or favorable.

2. Section 710.11 is revised to read as follows:

**§ 710.11 Criteria.**

Derogatory information included, but not limited to, those cases in which the individual has:

(a) Committed, prepared or attempted to commit, or aided, abetted or conspired with another to commit or attempt to commit any act of sabotage, espionage, treason, or sedition.

(b) Knowingly established or continued a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, or revolutionist, espionage agent, or representative of a foreign nation whose interests are inimical to the interests of the United States, or with any person advocating the use of force or violence to overthrow the Government of the United States by unconstitutional means.

(c) Knowingly held membership in or had a knowing affiliation with, or has taken action which evidences a sympathetic association with the intent of furthering the aims of, or adherence to, and active participation in any foreign or domestic organization, association, movement, group, or combination of persons which advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or Laws of the United

States or any state or subdivision thereof by unlawful means.

(d) Publicly or privately advocates, or participates in the activities of a group or organization, which has as its goal, revolution by force or violence to overthrow the Government of the United States or the alteration of the form of Government of the United States by unconstitutional means with the knowledge that it will further those goals.

(e) Parent(s), brother(s), sister(s), spouse, or offspring residing in a nation whose interests may be inimical to the interests of the United States, or in satellites or occupied areas thereof (to be evaluated in the light of the risk that pressure applied through such relatives could force the individual to act contrary to national security).

(f) Has deliberately misrepresented, falsified or omitted significant information from a Personnel Security Questionnaire, a personnel qualifications statement, or a personnel security interview.

(g) Has failed to protect classified information, or safeguard special nuclear material; or has willfully violated or disregarded security or safeguards regulations to a degree which would endanger the common defense and security or has intentionally disclosed classified information to a person unauthorized to receive such information.

(h) Has an illness or mental condition of a nature which in the opinion of competent medical authority causes, or may cause, significant defect in the judgment or reliability of the individual, or has refused to be examined by a psychiatrist.

(i) Has refused to testify before a Congressional Committee, Federal or state court, or Federal administrative body, regarding charges relevant to eligibility for DOE access authorization.

(j) Is a user of alcohol habitually to excess, or has been such without adequate evidence of rehabilitation or reformation.

(k) Has used, trafficked in, sold, transferred or possessed a drug or other substance listed in the schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, without adequate evidence of rehabilitation or reformation.

(l) Has engaged in any unusual conduct or is subject to any circumstances which tend to show that

the individual is not honest, reliable, or trustworthy, and there is no adequate evidence of rehabilitation or reformation; or which furnishes reason to believe that the individual may be subject to coercion, influence, or pressure which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include but are not limited to sexual activity, demonstrated financial irresponsibility or notoriously disgraceful conduct.

(FR Doc. 82-29123 Filed 7-14-82; 8:45 am)  
BILLING CODE 6460-01-01

## FEDERAL RESERVE SYSTEM

### 12 CFR Parts 207, 220, 221, and 224

#### Securities Credit Transactions

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The List of OTC Margin Stocks<sup>1</sup> is comprised of stocks traded over-the-counter (OTC) that have been determined by the Board of Governors of the Federal Reserve System to be subject to margin requirements under certain Federal Reserve regulations. The List is published from time to time by the Board as a guide for lenders subject to the regulations and the general public. This document sets forth additions to or deletions from the previously published List and will serve to give notice to the public about the changed status of certain stocks. For the first time a two-week delay before the List becomes effective will be instituted. This action was requested by the public in connection with a recent proposal to change the criteria for inclusion on the List.

**EFFECTIVE DATE:** July 28, 1982.

**FOR FURTHER INFORMATION CONTACT:** Jamie Lenoci, Financial Analyst, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-2781.

**SUPPLEMENTARY INFORMATION:** Set forth below are stocks representing additions to or deletions from the Board's List of OTC Margin Stocks. A copy of the complete List incorporating these additions and deletions is also on file at the office of the Federal Register. This complete List supersedes the last complete List published on October 5, 1981 and includes amendments to that List, effective March 1, 1982 (see 46 FR 49577, October 7, 1981 and 47 FR 8988,

March 3, 1982, respectively). The List, as amended, includes those stocks that the Board of Governors has found meet the criteria specified by the Board and thus have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant incorporating such stocks within the requirements of Regulations G, T, U, and X. Copies of the complete up-to-date List may be obtained from any Federal Reserve Bank.

The requirements of 5 U.S.C. section 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion on the List specified in 12 CFR 207.5 (d) and (e), 220.8 (h) and (i), and 221.4 (d) and (e). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. section 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of this List as soon as possible. The Board has responded to a recent request by the public and allowed a two-week delay before the List is effective.

#### List of Subjects in 12 CFR Part 207

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, Reporting requirements, Securities.

#### List of Subjects in 12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, Reporting requirements, Securities.

#### List of Subjects in 12 CFR Part 221

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, Reporting requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934 (15 U.S.C. secs. 78g and 78w) and in accordance with § 207.2(f)(2) of Regulation G, § 220.2(e)(2) of Regulation T, and § 221.3(d)(2) of Regulation U, there are set forth below additions to and deletions from the Board's List:

#### Additions

Advanced Semiconductor Materials International N.V., Dfls \$.03 par share  
Alaska Pacific Bancorporation, No par common

American International Group Inc., \$.50 par cumulative convertible preferred  
American Medical Affiliates, Inc., \$.10 par common  
American Trustee Inc., \$.10 par common  
AMFESCO Industries Inc., \$.10 par common  
Application Engineering Corporation, \$.10 par common  
Ask Computer Systems, Inc., No par common  
Associated Communications Corporation, \$.25 par common  
Bedford Computer Corporation, No par common  
Big B, Inc., \$.10 par common  
Bluewater Oil & Gas Limited, No par capital  
Bolt Technology Corporation, No par common  
Branch Corporation, \$.25 par common  
Canon Inc., American Depository Receipts for common stock (par value 50 yen)  
Carolyn Mines Ltd., No par common  
Central Louisiana Electric Company, Inc., \$.40 par common  
Cipher Data Products, Inc., No par common  
David Jamison Carlyle Corporation, The, \$.01 par common  
David Minerals Ltd., No par common  
Drew National Corporation, Class A, \$.50 par convertible preferred  
Dunlap and Associates, Inc., \$.10 par common  
Elron Electronics Industries Ltd., Preferred shares, 1/3 par value  
Elcint Limited, Ordinary shares, 1/5 par value  
Empire Airlines, Inc., \$.40 par common  
First Savings Association of Wisconsin, \$.10 par common  
Fonar Corporation, \$.001 par common  
Gamma Biologicals, Inc., \$.10 par common  
Garcia's of Scottsdale, Inc., \$.01 par common  
Global Natural Resources PLC, \$.01 par common  
Great American Bancorp., No par common  
Great Eastern Energy and Development Corporation, \$.10 par common  
Hei, Inc., \$.05 par common  
Health Care Fund, \$.10 par shares of beneficial interest  
Heritage Bancorp (California), No par common  
Home Depot, The, \$.05 par common  
Howard Bank, The (Burlington, VT), \$.50 par common  
Hybritech Incorporated, No par common  
Independence Bank Group, Inc. (Wisconsin), \$.33 1/3 par common  
Integrity Financial Group, Inc., The, \$.01 par common  
International Capital Equipment Limited, \$.05 par common  
International Game Technology, \$.01 par common  
Karcher, Carl Enterprises, Inc., No par common  
Kenai Corporation, Warrants (expire 07-15-85)  
Kloss Video Corporation, \$.20 par common  
Los Alamitos Race Course, \$.50 par capital  
Louisville Gas and Electric Company, 7.45% cumulative preferred  
Mathematics, Inc., \$.10 par common  
Mechanical Technology, Inc., \$.10 par common  
Metro Airlines, Inc., \$.10 par common

<sup>1</sup> Filed as part of the original document.